



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-880-10 et. seq.
<b>Regulation Title:</b>	Child Support Enforcement Program
<b>Action Title:</b>	Amend
<b>Date:</b>	April 20, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The regulation is being amended to accurately reflect the current child support enforcement program. This regulation became effective February, 1990, and it was last updated in 1995. These changes are necessary to incorporate new state and federal legislation into the current regulation.

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

This regulation exists to inform the public of the process used by the Virginia Department of Social Services to administer the Child Support Enforcement program. Title 63.1 Welfare (Social Services) of the Code of Virginia places the responsibility for providing child support enforcement services with the Department of Social Services. The Board of Social Services is given the authority to make rules and regulations in 63.1-25 of the Code of Virginia. The State Board shall establish guidelines to implement the Department’s responsibilities.

The web site address for the Code of Virginia is <http://leg1.state.va.us.000src.htm>.

**Purpose**

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

These amendments will implement required state and federal laws and provide for improved effectiveness in child support enforcement program operation. Collection of child support debts protects all citizens of the Commonwealth, particularly its children. Further, collection of delinquent child support in public assistance cases results in a reduction of legal debts to the state, thus contributing to the General Fund. The amendments to the regulation will accurately reflect the current Child Support Enforcement program.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action’s changes.*

Most of the changes contained in the proposed amended regulation have already been incorporated into the Department's procedures. The changes are: (1) Definition for interest added (proposed 22 VAC 40-880-10); (2) The department may request DMV to suspend or refuse to renew the drivers' license of a person who fails to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings (proposed 22 VAC 40-880-120); (3) When a putative father does not sign a sworn statement of paternity or does not voluntarily submit to genetic blood testing, the department shall order the putative father to submit to genetic testing (22 VAC 40-880-170); (4) All child support orders to include a provision for medical support if the coverage is available at a reasonable cost (22 VAC 40-880-220); (5) Additional enforcement remedies including interest, license suspension, interest, financial institution data match, and high-volume administrative enforcement when possible for interstate cases (22 VAC 40-880-260); (6) Allows electronic transmission of income withholding order on the employer, and the employer is to provide a copy to the employee (22 VAC 40-880-270); (7) Liens arise by operation of law (22 VAC 40-880-330); (8) The Department may petition the court to suspend any license, certificate, registration, or other authorization to engage in a business, trade, profession, occupation, recreation or sporting activity issued to an obligor who is delinquent in the payment of child support by a period of ninety days or more or for \$5,000 or more. The Department may order the Department of Motor Vehicles to suspend or refuse to renew the drivers' license of an obligor delinquent in the payment of child by ninety days or more or for \$5,000 or more (22 VAC 40-880-385); (9) The Department shall release information concerning the noncustodial parent to consumer credit agencies (22 VAC 40-880-520); (10) When a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotion harm from the other party, information other than the name of the party at risk shall not be released (22 VAC 40-880-550); (11) The Department may require advance payment for subsequent genetic testing when the original results are contested (22 VAC 40-880-700).

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The public will benefit from the changes in the proposed regulation as it will be informed of the current process. The agency and Commonwealth will benefit by knowing that the regulation is updated and accurate. There are no disadvantages to the public, agency, or Commonwealth because of the changes made to this regulation.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget*

*activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

A statement identifying anticipated regulatory impacts that includes (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; and (d) the agency's best estimate of the number of such entities that will be affected.

- (a) There is no projected cost to the state.
- (b) There is no projected cost to the localities.
- (c) This regulation affects custodial and noncustodial parents and the children of this Commonwealth. It will also impact employers
- (d) As of March 31, 1999, the Division of Child Support Enforcement caseload totaled 422,854. As of third quarter of 1998, there were 184,824 employment establishments per the Virginia Employment Commission.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

Specifically, the following substantive changes are being proposed:

### Chapter 880 – Child Support Enforcement Program Appendix

Part IX is amended to properly identify recipient as referenced throughout the proposed regulation..

#### Proposed 22 VAC 40-880-10

The definition for “AFDC” is amended to reference definition for TANF.

The definition for “absent parent” is amended to reflect current Code of Virginia

The definition for “administrative” is amended to include all administrative functions.

The definition for “appeal” is amended to encompass all appeal types.

The definition for “application” is amended to reflect all recipients.

The definitions for “assignment” and “delinquency” have been expanded to include all support types.

The definitions for “custodial parent” and “debt” are amended to include new definitions referenced in the proposed regulation.

The definition for “division” is amended to include additional terminology.

The definition for “erroneous payment” is amended to reflect new definitions as appropriate.

The definition for “financial statement” is amended to clarify intended parties.

The definition for “genetic testing” is amended to correctly reflect §63.1-250.1:2 of the Code of Virginia.

The definition for “health insurance coverage” is amended to accurately reflect both parents.

The definition for “hearings officer” is amended to specify type of actions addressed by the Hearing officer.

The definition for “local social service agency” and “public assistance” are modified to reflect AFDC program name change to TANF.

The definition for “location”, and “mistake of fact” are amended to properly identify obligor as referenced in this proposed regulation.

The definition for “obligation” is amended to reflect obligor as referenced throughout this proposed regulation. The definition is also amended to identify both court and administrative obligations.

The definition for “pendency of appeal” is amended to identify both court and administrative processes.

The definition for “recipient” is amended to include all case types.

The definition for “service” or “service of process” are amended to broaden the definition of person (s) that may require service of process.

The definition for “default obligation” is being deleted as it refers to a method of obligation that no longer exists.

The definition for “disregard payment” is being deleted as this payment no longer exists.

The definitions for “applicant”, “arrear or arrearage”, “case summary”, “Child Support Guideline”, “good cause”, “interest”, “judgement rate”, “noncustodial parent”, “occupational license”, “obligee”, “obligor”, “recreational license”, “subpoena”, “subpoena duces tecum”, “Summary of facts”, “support order”, and “TANF”, have been added as they are referenced in the proposed regulation, or for clarification only.

#### Proposed 22 VAC 40-880-30

Section A clarified language relating to the requirement for TANF and AFDC/FC applicants/recipients to assign rights to support to the state as a condition of eligibility. Changed language that limited basic services to custodial parents to include noncustodial parents as well. Clarified that when cases close to TANF or AFDC/FC, the department may keep a case open to collect arrears owed to the state. Removed the limitation for accepting applications from out of state residents to comply with federal regulations.

Section B clarified that DCSE may accept an application for a child over age 18 only when there is a court order for support of the individual (e.g., arrangements for handicapped dependents or for post secondary education). Removed the requirement for the child for whom support is to be pursued to live with the applicant.

Section C changed who is entitled to locate only services to comply with federal regulations and the Personal Responsibility and Work Reconciliation Act of 1996 (PRWORA).

#### Proposed 22 VAC 40-880-60

Removed language relating to distribution of support collected to comply with PRWORA provisions. This allows payments for arrears to be distributed to families first rather than to the state first.

#### Proposed 22 VAC 40-880-80

Changed language throughout to include persons besides custodial parents who may apply for services.

#### Proposed 22 VAC 40-880-110

Simplified language to state that the department shall use diligent efforts to serve process rather than trying to define diligent efforts. Simply repeating attempts to serve process is not efficient or practical, because the problem is usually lack of locate information, not lack of effort to serve process.

Proposed 22 VAC 40-880-120

The current section on Administrative Summons has been revised by expanding the subject of an administrative summons to include all parties that are able to provide essential information necessary for the collection of child support, not limited to parents. A penalty was added for failure to comply with the administrative summons, subpoena, warrant, or writ of capias relating to paternity or child support proceedings pursuant to § 46.2-320 of the Code of Virginia.

Proposed 22 VAC 40-880-130

Section A was amended to specify that custodial parents must pay the costs of genetic testing if contesting original test results, as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193).

Proposed 22 VAC 40-880-170

Code of Virginia cites are referenced to provide the legal base for paternity establishment. The section was also amended to specify that the Department is authorized to order a putative father to submit to genetic testing, as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193). An outdated federal regulation stipulating time frames for paternity establishment was deleted.

Proposed 22 VAC 40-880-190

Section C deleted due to inclusion of additional Code of Virginia to this section of the proposed regulation.

Section D changed to Section C due to deletion as above of existing Section C. Technical changes made for clarity purposes.

Section E changed to Section D due to above proposed changes. Technical changes made for clarification purposes.

Section F changed to Section E as indicated above. Technical changes for clarification purposes.

Section F are technical changes only.

Section G proposed to indicate when not to establish an obligation to comport with the state code as referenced in this proposed regulation.

Proposed 22 VAC 40-880-200

Section A language modified to specifically identify administrative type of obligation. Deleted all information regarding the contents of an order due to this specification, as it is no longer necessary due to the order type identification.

Section B amended to specify financial information is verified. Section B-1 also amended to accurately reflect that both parents incomes are to be used, as the custodial parent is often times, not the “legal parent”. Again, information added to indicate financial information is verified. Section B-2 amended to identify “parents”. Section B-3 amended to reflect name change of the program, and information indicating financial information is verified has been added. Section B-4 amended to include language that the department has the authority to request financial information. This information was added pursuant to Code of Virginia as referenced in this section. Section –B-5 amended to indicate “legal parents” are responsible to provide financial information. Section B-6 has been deleted as this information is incorporated into Section B-5.

Section C is being deleted as it did not comply with the Virginia Child Support Guidelines, Federal regulations, and the Code of Virginia.

Current Section D is proposed to be Section C.

Proposed 22 VAC 40-880-210

Section amended to comply with new federal mandates pursuant to Public Law 104-193. Minor technical changes made also to comport with other changes to the proposed regulation.

Proposed 22 VAC 40-880-220

Changed language regarding the medical support obligor’s requirement to provide certain information to the department regarding the availability of health insurance for his/her children, and changes in this coverage.

Proposed 22 VAC 40-880-230

Section A amended to specify that the child support guideline is to be used when establishing obligations.

Sections B, C, D, and E deleted as all information included in 22 VAC 40-880-200 of this proposed regulation.

Current section F amended to become proposed Section B.

Proposed 22 VAC 40-880-240

Section amended to reflect new Code of Virginia as cited in this section. Specifically, information is being added on factors to consider when establishing an obligation.

Proposed 22 VAC 40-880-250

Section amended to comport with new federal and state law as referenced in this section. Minor technical changes have also been made.

## Proposed 22 VAC 40-880-260

Section B on enforcement rules has been revised to incorporate the immediate withholding of earnings and the voluntary assignment of earnings under one name, income withholding order. The Federal Office of Child Support Enforcement has issued a standard form for all states to use for income withholdings. This form is to be used for all withholding types, immediate, mandatory, and voluntary.

Section C on enforcement rules has been revised to incorporate the mandatory withholdings of earnings under one name, income withholding order. The Federal Office of Child Support Enforcement has issued a standard form for all states to use for income withholdings. This form is to be used for all withholding types, immediate, mandatory, and voluntary. Additional enforcement remedies have been added, namely interest on arrears; the suspension of drivers, occupational, professional, recreational or sporting licenses; and data matches with financial institutions. The suspension of drivers, occupational, professional, recreational or sporting licenses and data matches with financial institutions are requirements of the Personal Responsibility Worker Opportunities Act of 1996 (PRWORA).

Section E on enforcement rules has been revised to reflect the change of absent parent to noncustodial parent.

Section E on enforcement rules has been revised to reflect the change of absent parent to noncustodial parent.

Section F on enforcement rules has been revised to reflect the change of absent parent to noncustodial parent.

Section I on enforcement rules has been added which stipulates that the department may receive requests from other states to be included in any high-volume administrative enforcement actions that are taken to enforce support orders. The requirement to use high-volume administrative enforcement for interstate cases is a requirement of the Personal Responsibility Worker Opportunities Act of 1996 (PRWORA).

## Proposed 22 VAC 40-880-270

Section A has been revised to delete the reference to earnings and insert the more broadly defined income since income other than earnings are subject to withholding.

Section B has been revised with technical clarification.

Section C has been revised to include the additional methods of service for the income withholding order. The additional service methods are service of the employer and employee copy of the order to the employer using certified mail, or electronic means.

Section D has been revised with technical clarification.

Section E has been revised with technical clarification. The section has also been clarified to indicate that when a nonpublic assistance applicant request that a case be closed, the income withholding is released unless there is a debt owed to the Commonwealth.

Proposed 22 VAC 40-880-280

The current section on Withholding of Income has been revised to reflect the change of absent parent to noncustodial parent. The section has been revised to reflect the requirement for immediate withholding in child support orders unless the parties agree in writing or the department determines good cause for not implementing immediate income withholding. The reference to voluntary assignment of earnings has been deleted since it is no longer applicable.

Proposed 22 VAC 40-880-290

This section is being renamed to determining the amount to be applied toward past due support and information regarding how to derive at the amount to collect to satisfy arrearages has been added.

Proposed 22 VAC 40-880-300

This section is being renamed to Alternative Payment Arrangement and includes information regarding the written alternative payment arrangement or the use of the assignment of earnings as an alternative payment arrangement.

Proposed 22 VAC 40-880-320

This section is being renamed to initiated withholding of income to delete the reference to earnings and insert the more broadly defined income. Mandatory was changed to initiated since the income withholding must be initiated by the worker when the child support obligation becomes delinquent.

Proposed 22 VAC 40-880-330

The current section on liens has been revised to incorporate PRWORA requirements that liens arise by operation of law for child support debts.

Proposed 22 VAC 40-880-340

Language added to include Administrative Enforcement for Interstate Cases (AEI) as required by PRWORA.

Proposed 22 VAC-40-880-360

The current section on unemployment compensation benefits intercept has been revised to incorporate the withholding limits as set by the federal Consumer Credit Protection Act

Proposed 22 VAC 40-880-370

Proposed code site change only.

Proposed 22 VAC 40-880-380

Section A amended to comply with new federally mandated distribution rules with minor technical changes made for clarity purposes. Section A-3 has been added to indicate that state tax intercepts shall be distributed in the same manner as other payments received. Existing Section A-3 proposed to be Section A-4, and existing Section A-4, proposed to become Section A-5.

Proposed 22 VAC 40-880-385

This new section was created due to mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193).  
Proposed 22-40-880-410

This section on enforcement remedies to be used against federal employees has been revised to reflect PRWORA requirements for collecting child support owed by federal employees, military personnel and public health services employees.

Proposed 22 VAC 40-880-430

Changed references to the person who files an appeal to “appellant.” Noncustodial parents are no longer the only parties who may appeal certain notices.

Proposed 22 VAC 40-880-440

Changed references to the person making an appeal to “appellant,” and to persons who may want to attend and have legal representation as “parties.”

Proposed 22 VAC 40-880-480

Proposed technical changes only.

Proposed 22 VAC 40-880-490

Proposed technical change to conform with Interstate case processing name change from URESA to UIFSA. Code section technical changes only.

Proposed 22 VAC 40-880-500

This section was amended due to mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-510

This section was amended due to mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-520

This section was amended due to mandates specified in the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193)

Proposed 22 VAC 40-880-550

Added a provision, as required by PRWORA, that when a protective order has been issued or the department otherwise finds reason to believe that a party is at risk of harm from the other party, information other than the name of the party at risk shall not be released.

Proposed 22 VAC 40-880-560

Removed a reference relating to release of health insurance information in non-public assistance cases. No specific reference is required in this section as it is regulated by section 22 VAC 40-880-550 addressing release of information in general.

Proposed 22 VAC 40-880-650

Proposed technical changes and term “AFDC” replaced with “TANF”.

Proposed 22 VAC 40-880-670

Removed references in paragraphs B and D as these circumstances are now covered by paragraph A. Paragraph E is deleted as new state guidelines have been developed governing retention of case record material.

Proposed 22 VAC 40-880-680

Proposed technical changes only.

Proposed 22 VAC 40-880-700

Section B added the condition that, as mandated by the Personal Responsibility and Work Opportunity Reconciliation Act, the department may require advance payment for subsequent genetic testing when the original results are contested.

Proposed 22 VAC 40-880-715

This section on Service of Process, Seizure and Sale has been added to give the department the authority to pass the cost for service of process as it relates to the seizure and sale of property as well as the seizure and sale cost.

Proposed 22 VAC 40-880-720

Proposed technical changes only.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The Department is revising this regulation to incorporate new state and federal legislation into the current regulation. The regulation encompasses all functions of the child support enforcement program. In revising this regulation the Department believes that it is less burdensome and less intrusive.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

The agency received no comment on the Notice of Intended Regulatory Action.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

The Division has determined the regulation to be clearly written and easily understood by all affected entities. The Division received no public comment on our Notice of Intended Regulatory Action.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

A schedule setting forth when, no later than three years after the proposed regulation is expected to be effective, the agency will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated, and the specific and measurable goals the proposed regulation is intended to achieve.

The agency will initiate a review and re-evaluation of the regulation in June of 2003. The goals for this regulation are to implement required state and federal laws and provide for improved effectiveness in the child support enforcement program operation.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

These regulations are expected to impact the institution of family and family stability in the following ways:

- 1.) These regulations strengthen the authority and rights of parents in the education, nurturing and supervision of their children. DCSE provides location of noncustodial parents, establishment of paternity, establishment of support obligations, and the enforcement techniques necessary to collect child support. Child support enforcement is a vital component of the Governor's resolve to strengthen Virginia's families. It has been proven that early paternity establishment fosters the relationship between the child and father. Paternity establishment also contributes to the cohesiveness of the family unit. Studies also suggest that providing child support consistently is conducive to an ongoing relationship between the child and both parents.
- 2.) These regulations encourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself and one's children by providing the financial support necessary to care for the child or children of the relationship. Statistics show that receiving child support is a key component to the success of Welfare Reform. DCSE provides a vital service for the continued improvement of the self-esteem of today's youth. Research has shown that regular child support is linked to more years of school attendance, increases in grade point averages, and reductions in behavior problems - which may be due in part to the child feeling that Dad cares.

3.) These regulations are not expected to impact, via strengthening or eroding, the marital commitment.

4.) These regulations increase disposable family income. The regulations herein provide the DCSE program with the necessary tools to provide a family not only money that is vital to a custodian raising children in single parent homes, but also encourages a relationship between noncustodial parents and their children